

## OPINION SUMMARY

### MISSOURI COURT OF APPEALS EASTERN DISTRICT

#### DIVISION ONE

ANTHONY ARCESE,	)	ED103087
	)	
Appellant,	)	Appeal from the Circuit Court of
	)	St. Louis County
v.	)	11SL-CC04781
	)	
DANIEL SCHMITT & COMPANY,	)	Honorable Gloria Clark Reno
	)	
Respondent.	)	Filed: September 6, 2016

Anthony Arcese ("Plaintiff") filed suit against Daniel Schmitt & Co. ("Defendant") alleging, *inter alia*, violations of the Missouri Merchandising Practices Act ("MMPA"), Section 407.010, *et seq.*, in connection with the sale of a 1954 Cadillac convertible. In response thereto, Defendant filed a counterclaim for breach of contract. After a bench trial, judgment was entered in favor of Defendant and against Plaintiff.

AFFIRMED IN PART; REVERSED IN PART.

Division One Holds: The trial court did not err in finding a valid and enforceable liquidated damages clause and permitting Defendant to retain \$7,000 as a result thereof. However, the trial court did err in awarding Defendant actual damages in addition to liquidated damages for Plaintiff's breach of contract. Moreover, although prevailing-defendants may be awarded attorney's fees pursuant to the Missouri Merchandising Practices Act, under these circumstances, it was error for the trial court to award Defendant attorney's fees.

Opinion by: Lisa P. Page, J.

Robert M. Clayton III, P.J. and Mary K. Hoff, J., concur.

Attorney for Appellant: Mitchell B. Stoddard

Attorney for Respondent: Louis J. Basso, Jacqueline M. Kinder, and Russell F. Watters

<p><b>THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.</b></p>
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